



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OFFICE OF
ENFORCEMENT AND
COMPLIANCE ASSURANCE

VIA ELECTRONIC MAIL

Jorge Lavastida
Executive Office and Plant Manager
Denka Performance Elastomer, LLC
560 Highway 44
LaPlace, LA 70068
Jorge-Lavastida@denka-pe.com

Re: Clean Air Act Information Request for Denka Performance Elastomer, LLC Facility in
LaPlace, Louisiana

Dear Mr. Lavastida:

The United States Environmental Protection Agency (EPA) hereby requires Denka Performance Elastomer, LLC (DPE) to provide certain information to determine the Clean Air Act (CAA or the Act) compliance status of its neoprene manufacturing facility in LaPlace, Louisiana. In April 2021, EPA monitors in the vicinity of DPE's LaPlace facility registered elevated ambient concentrations of chloroprene. EPA is requesting information about operations at and emissions from DPE's facilities at the time of those elevated chloroprene concentrations for the purpose of determining whether unauthorized emissions occurred.

Pursuant to section 114(a) of the CAA, 42 U.S.C. § 7414(a), the Administrator of the EPA is authorized to require any person who owns or operates an emissions source to establish and maintain records, make reports, sample emissions (in accordance with the procedures and methods that the Administrator shall prescribe) and provide such other information as he may reasonably require for the purpose of, among other things, determining whether any person is in violation of the CAA. This authority has been delegated to the undersigned official. DPE is hereby required, pursuant to section 114(a) of the CAA, to provide responses to this information request, within 30 calendar days from receipt of this information request. Instructions and definitions are provided in Enclosure 1 and the information requested is specified in Enclosure 2.

In addition, DPE is required to attach a properly executed Statement of Certification (see Enclosure 3) with its responses to this information request. The statement must be signed and dated. Finally, DPE is under an obligation to preserve all documents requested in this letter until it receives further instructions from the EPA.

Failure to provide the required information is a violation of the Act and may result in one or more of the following actions: 1) issuance of an administrative penalty order pursuant to section 113(d) of the Act, 42 U.S.C. § 7413(d); 2) issuance of an order requiring compliance with this information request pursuant to section 113(a) of the Act, 42 U.S.C. § 7413(a); 3) initiation of a civil action pursuant to section 113(b) of the Act, 42 U.S.C. § 7413(b); and 4) initiation of any other action authorized under the Act. In addition, knowingly providing false information in response to this information request may be actionable under section 113(c) of the Act, 42 U.S.C. § 7413(c), and 18 U.S.C. §§ 1001 and 1341. The information DPE provides may be used by the EPA in administrative, civil, and criminal proceedings.

Under section 114(c) of the Act, 42 U.S.C. § 7414(c), and pursuant to regulations at 40 C.F.R. Part 2, including 40 C.F.R. § 2.301, DPE may claim as confidential any information provided to the EPA that involves trade secrets and is regarded as confidential business information. DPE may request that the EPA treat such information as confidential business information. Any claim for confidentiality must conform to the requirements of 40 C.F.R. § 2.203(b). Note that emission data cannot be claimed as confidential under section 114(c). For detailed instructions, please see Enclosure 4. Information provided to the EPA will be treated as confidential business information to the degree determined to be appropriate according to the regulations. If DPE fails to claim confidentiality with its response to this information request, the EPA will construe your failure as a waiver of that claim, and the information may be made available to the public without further notice to DPE.

Please submit the requested information electronically. You may do so via email to Providence Spina at spina.providence@epa.gov. Please note that the EPA email server will allow attachments up to 20 MB. Alternatively, DPE may want to provide documents in response to this information request by way of a secure file sharing site. Please let us know how DPE wants to proceed.

If you have any questions regarding this information request, please contact Providence Spina at 202-564-2722 (spina.providence@epa.gov).

Sincerely,

**EVAN
BELSER**

Digitally signed by EVAN
BELSER
Date: 2021.06.08
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Evan Belser, Acting Director
Air Enforcement Division
Office of Civil Enforcement

cc: Steve Thompson, Chief, Air Enforcement Branch, EPA Region 6
Justin Lannen, Office of Regional Counsel, EPA Region 6
Providence Spina, Air Enforcement Division, OECA
Celena Cage, Louisiana Department of Environmental Quality
Jason Hutt, Bracewell LLP
Robert Holden, Jones Walker LLP

Enclosures: 1) Instructions and Definitions
2) Information Request
3) Statement of Certification
4) Confidential Business Information

ENCLOSURE 1

A. Instructions

1. Provide a separate narrative response to each request and subpart set forth in the Information Request. Provide all Documents supporting Your responses to this Information Request, such as performance test reports, inspection records, memorandums, facility records, permits, etc. If DPE has no responsive Information or Documents pertaining to a particular request, submit an affirmative statement and explanation.
2. Precede each answer with the number of the request to which it corresponds and at the end of each answer identify the Person(s) (including name, title, and a description of job duties) who provided Information that was used or considered in responding to that request, as well as each Person (including name, title, and a description of job duties) who was consulted in the preparation of that response.
3. Indicate on each Document produced in response to this Information Request, or in some other reasonable manner, the number of the request to which it corresponds. If a Document is responsive to more than one request, this must be so indicated and only one copy of the Document needs to be provided.
4. Where requested, please submit electronic data or list information in Microsoft Excel or similar format. You may also provide all Documents responsive to this Information Request in electronic Portable Document Format (PDF). All submitted Documents must be accurate and legible.
5. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner and the basis for the number provided (e.g., estimated, measured or engineering judgment).
6. Where Documents or Information necessary for a response are neither in Your possession nor available to You, indicate in Your response why such Documents or Information are not available or in Your possession and identify any source that either possesses or is likely to possess such Documents or Information.

B. Definitions

All terms used in this Information Request will have their ordinary meaning unless such terms are defined in the Clean Air Act, in which case the definitions in the CAA and the implementing regulations shall prevail.

Document and the plural form thereof means all written, recorded or graphic matters, however produced or reproduced, of every kind and description, pertaining in any way to the subject matter of this action. The terms "Document" shall include, but is not limited to: any receipts; invoices; shipping records; purchase orders; purchase records; books; pamphlets; periodicals; memoranda (including those of telephone or oral conversations); contracts; correspondence;

agreements; applications; financial records; security instruments; disbursements; checks; bank statements; time records; accounting or financial records; notes; diaries; logs; facsimiles (faxes); telegrams or cables prepared, drafted, received or sent; electronic mail (emails), whether drafted, received or sent; tapes; transcripts; recordings; minutes and notes of meetings; directives; work papers; charts; drawings; prints; flow sheets; photographs; infrared camera recordings; film; computer printouts; x-ray photographs; advertisements; catalogs; data; sampling reports, plans, protocols, reports, analyses; or any handwritten, recorded, transcribed punched, taped, filmed or graphic matter, however produced or reproduced, in DPE's possession, custody or control or to which DPE has or has had access.

DPE means Denka Performance Elastomer, LLC and includes any parent corporation, subsidiaries, whether wholly or partially owned, or joint-ventures, or other business affiliations.

EPA means the United States Environmental Protection Agency.

Information Request means this letter and its enclosures.

Information means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including but not limited to, the following: memoranda, reports, books, manuals, instructions, working papers, records, notes, letters, notices, confirmations, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intraoffice communications, electronic mail (email), calendars, contracts, cables, notations of any type of conversation, telephone call, meeting, or other communication, bulletins, printed matter, computer printouts, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, presentations, spreadsheets, and work sheets. The term "*Information*" includes all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments to the foregoing, as well as any attachments or appendances thereto. The term "*Information*" also means any graphic or oral records or representations of any kind (including, without limitation, photographs, charts, graphs, voicemails, microfiche, microfilm, videotapes, recordings, and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, back-up tape, memory sticks, recordings, and removable computer media such as thumb drives, flash drives, memory cards, and external hard drives), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, electronic format, disk, videotape or otherwise. Information bearing any notation not part of the original text is considered to be separate Information. A draft or non-identical copy is separate Information within the meaning of this term.

Person or its plural or any synonym thereof, is intended to and shall embrace and include any individual, partnership, corporation, company, association, government agency (whether federal, state, local or any agency of the government of a foreign country) or any other entity.

You and/or *Your* means DPE, and all its agents, servants, employees, representatives, investigators, accountants, auditors, attorneys, experts, consultants, contractors and others who

are in possession, custody or control (actual or constructive) of relevant Information that is otherwise available to You, or may have obtained Information for or on behalf of, DPE.

ENCLOSURE 2

Information Request

The U.S. Environmental Protection Agency has deployed a continuous air monitoring program to monitor for elevated ambient concentrations of chloroprene near DPE's neoprene manufacturing facility. Table 1 provides a subset of the monitoring results¹, identified by date, monitor location, chloroprene concentration, and the start and stop time of the air sample collection.

TABLE 1: Continuous Air Monitoring Program Results

Date	Monitor Location	Chloroprene Concentration ($\mu\text{g}/\text{m}^3$)	Sample Start Time	Sample Stop Time (Following Day)
4/2/2021	Levee	10.435	9:13	9:18
4/3/2021	Chad Baker	12.209	22:44	22:57

Using the instructions and definitions set forth in Enclosure 1, provide the following Information within the time specified in the cover letter of this Information Request.

1. Provide a list of facility operations and activities that resulted in chloroprene emissions on the dates in Table 1, identify all emission sources and emission points pertinent to those operations and activities, and identify which of those operations or activities caused or had the potential to cause the elevated concentrations of chloroprene on each day.
2. Did any of the following activities or events occur on the dates listed in Table 1? If yes, identify the process units, equipment, or other location where the activity or event took place, including emission sources and emission points.
 - a. Planned or unplanned maintenance, including but not limited to, the emptying, steaming and/or cleaning of equipment in preparation for planned or unplanned maintenance, that resulted in chloroprene emissions that could have caused or contributed to the elevated concentrations of chloroprene on each day;
 - b. Polymer waste management or removal;
 - c. Malfunction or other unauthorized emission;
 - d. Equipment leaks;
 - e. Pollution control bypass; and
 - f. Startup or shutdown of equipment.
3. Does DPE have any documents, monitoring or otherwise, that contain or would inform an amount or estimated amount of chloroprene emissions associated with any activity or event listed in response to Request(s) 1 or 2? If so, provide those documents.
4. Does DPE possess any documents pertaining to any investigation, study, analysis, or audit into any of the activities or events listed in response to Request(s) 1 or 2? If so, provide all documents, including reports and any other analyses, concerning that investigation, study, analysis, or audit.

¹ Complete monitoring results are available at: <https://www.epa.gov/la/denka-air-monitoring-data-summary>.

5. Did DPE take any action to reduce or cease emissions from the activities or events listed in response to Requests 1 or 2, or to reduce their duration? If so, provide all documents concerning any such actions taken.
6. Did DPE consider or take any action to prevent the recurrence of the activities or events listed in response to Requests 1 or 2? If so, provide all documents concerning any such actions considered or taken.

ENCLOSURE 3

Statement of Certification

I certify under penalty of law that I have personally examined and am familiar with the information submitted in this document and all attachments. Based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the information is true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine or imprisonment for knowing violations pursuant to section 113(c)(2) of the Clean Air Act, and 18 U.S.C. §§ 1001 and 1341.

(Signature)

(Printed Name)

(Title)

(Date)

ENCLOSURE 4

Confidential Business Information (CBI)

An entity may assert a business confidentiality claim covering all or part of the information provided in response to this Information Request for any business information entitled to confidential treatment under Section 114(c) of the CAA, 42 U.S.C. § 7414(c), and 40 C.F.R. Part 2, subpart B. Under Section 114(c) of the CAA, entities are entitled to confidential treatment of information that would divulge methods or processes entitled to protection as trade secrets. Under 40 C.F.R. Part 2, subpart B, business confidentiality means “the concept of trade secrecy and other related legal concepts which give (or may give) a business the right to preserve the confidentiality of business information and to limit its use or disclosure by others in order that the business may obtain or retain business advantages it derives from its rights in the information.” 40 C.F.R. § 2.201(e).

Information covered by a claim of business confidentiality will be disclosed by the EPA only to the extent, and by means of the procedures, set forth in Section 114(c) of the CAA and 40 C.F.R. Part 2, subpart B. If no such business confidentiality claim accompanies the response to this Information Request when it is received by the EPA, then such information may be made available to the public without further notice. 40 C.F.R. § 2.203(c).

Pursuant to 40 C.F.R. § 2.301(h), the EPA possesses the authority to disclose to any authorized representative of the United States information which might otherwise be entitled to confidential treatment. To assist in its review and analysis, the EPA may disclose information provided in response to this and other information requests to an EPA contractor, the Eastern Research Group, under contract number EP-W-15-006.

To assert a business confidentiality claim, an entity must place on (or attach to) all information subject to the claim either a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as “trade secret,” “proprietary,” or “company confidential” at the time it provides its response to this Information Request. Allegedly confidential portions of otherwise non-confidential documents should be clearly identified and may be provided separately to facilitate identification and handling by the EPA. An entity should indicate whether confidential treatment is only required until a certain date or until the occurrence of a certain event.

The criteria the EPA will use in determining whether material claimed as business confidential is entitled to confidential treatment are set forth at 40 C.F.R. §§ 2.208(a)-(d) and 2.301. Emission data, as defined at 40 C.F.R. § 2.301(a)(2), is expressly not entitled to confidential treatment under 40 C.F.R. Part 2, subpart B. See 42 U.S.C. § 7414(c); 40 C.F.R. § 2.301(e).